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IN THE

Supreme Court of the United States

October Term, 1949.

No. .....

RUTH VENA JOHNSON, also known as RUTH BOYCE, GLADYS VENES, FRANK VENES, a Minor, RUTH VENES, a Minor, MARY JANE VENES, a Minor, and GLADYS VENES as Guardian *ad Litem* for said Minors,

Petitioners and Appellants,

vs.

GEORGE GARDNER, as Trustee in Bankruptcy for the Estate of Ruth Vena Johnson, also known as Ruth Boyce, Bankrupt,

Respondent and Appellee.

RESPONDENT'S BRIEF IN RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

The respondent, George Gardner, as trustee in bankruptcy for the estate of Ruth Vena Johnson, also known as Ruth Boyce, in order to expedite a termination of the vexatious litigation carried on by this dishonest and fraudulent bankrupt, is filing his brief in resistance to her latest attempt to prolong fruitless litigation, immediately upon being served with the petition for writ of certiorari filed, apparently *in forma pauperis,* by the bankrupt and fraudulent transferor.

There is scarcely a ground for denying this writ that is lacking here, and at the onset we shall recite them.

In the first place, the petitioner for certiorari would appear to be the dishonest bankrupt, Ruth Vena Johnson, purporting to act gratuitously for her dummy transferees in whose names she attempted to conceal valuable real property prior to her bankruptcy. We note that the petition, filed here *in forma pauperis,* is signed by Morris Lavine, attorney for appellant, Ruth Vena Johnson, also known as Ruth Boyce. It is not verified nor is it accompanied by any certificate of counsel that the petition is filed in good faith and without any intent to hinder or delay the respondent herein.

In the second place, this dishonest bankrupt, in petitioning this Court for writ of certiorari, appears to have resorted to the use of a second dummy. The Court will note that at page 1 of the petition appears the following:

> *"Your petitioner, Bonewicz X. Dawson,* respectfully petitions for a Writ of Certiorari and in respect thereto sets forth as follows:" etc. (Italics ours.)

What connection Bonewicz X. Dawson has with this case is beyond the writer's comprehension, and he has lived with this case since the adjudication in bankruptcy of Ruth Vena Johnson on April 24, 1947. Neither the dummy, Bonewicz X. Dawson nor the fraudulent transferor, Ruth Vena Johnson, much less the parties affected by the decree, have seen fit to verify this dilatory and vexatious petition nor has counsel, a member of the Bar of this Court, seen fit to certify that it is taken in good faith and not for the purpose of delaying the trustee. (O'Brien's Manual of Federal Appellate Procedure, Third Edition, page 289.)

Argument on Points and Authorities.

There is no contention raised here that the evidence was not sufficient to justify the findings of the Court and that it was clear and convincing on the question of fraud. The only question sought to be raised here is that Ruth Vena Johnson, the bankrupt and fraudulent transferor, who sought to conceal her property from her trustee in bankruptcy by means of a fraudulent transfer to her daughter in Scotch Plains, New Jersey, and her grandchildren, likewise in Scotch Plains, New Jersey, of valuable real property situated in Los Angeles, California, was entitled to demand a jury trial as a matter of right on the question of her fraud, under the Seventh Amendment to the Constitution of the United States, and assuming that she was not entitled to such jury trial in an equitable proceeding to set this fraudulent transfer aside, the Court should have, after she had discharged counsel whom she had employed, on the morning of the trial, granted her a jury trial. She proceeded to try this case *in propria persona,* and on behalf of her fraudulent transferees, and lost. No relief was granted against *her* under the judgment of the District Court except to declare her attempted transfer null and void. In the Court of Appeals she attempted to mislead the Court by stating at the onset of her brief at page 2 thereof, that she had been represented "by Court appointed counsel who had not demanded a jury." This falsehood was directed to the attention of the Court of Appeals by counsel for the respondent who called attention to the record in the lower Court, showing that Rupert B. Turnbull had filed the answer and had represented all

of the parties in the proceeding up to the actual morning of the trial. The Court of Appeals took cognizance of this fact in the following language:

> "The defendants all duly appeared and *through their employed attorney, Rupert B. Turnbull, Esq.,* on February 10, 1948, filed a joint answer to the amended complaint, which answer was verified by defendant Ruth Vena Johnson." (Italics ours.)

In this Court she attempts, in a more adroit and cunning manner, to lead the Court to believe that she was poorly represented in the lower Court by appointed counsel, in the following language:

> "On the date that the case was called for trial, November 23, 1948, there was a jury panel in attendance in the Court and Ruth Vena Johnson was present in person.
>
> *"The Court Attorney, Rupert B. Turnbull, who had appeared for the appellant* was permitted to withdraw as her attorney and the Court allowed her to proceed as her own attorney." (Italics ours.)

What a "Court Attorney" is, the writer does not know, unless Mrs. Johnson is still endeavoring to convince Appellate Courts that she and her fraudulent transferees were represented as paupers by Court appointed counsel who neglected to protect their rights.

A jury trial is not a matter of right in an equitable proceeding and the Court did not abuse its discretion in declining to impanel a jury in a fraudulent conveyance case of this nature.

The action was brought to avoid a fraudulent conveyance of real property and to cancel two fictitious deeds of record, executed by the bankrupt prior to bankruptcy, recorded, which permitted the bankrupt to remain in possession of the real property and collect the rents, income and profits therefrom. The bankrupt was only joined as a party defendant for the purpose of compelling an accounting by her of rents, issues and profits collected by her after bankruptcy from this fraudulently conveyed property. The District Court did not see fit to render a judgment against this bankrupt, who has been pursuing these appeals *in forma pauperis,* but merely contented itself with avoiding the fraudulent conveyance, and the bankrupt who claims to have parted with title to this property has no standing here to challenge the decree rendered against her fraudulent transferees. She would not be in a position to do it herself and she is in a much poorer position to do it in the name of a dummy, Bonewicz X. Dawson.

That the proceedings in this case were of equitable cognizance has long been well settled.

Barceloux v. Buffum, 289 U. S. 227;

Brainerd v. Cohn, 8 F. 2d 13;

Morris v. Neumann, 293 Fed. 974;

Van Deventer v. Lott, 180 Fed. 378;

Hirshfield v. Bryant, 14 F. 2d 931;

Trans-Pacific Corp. v. Goggin, 166 F. 2d 1021, affirming the decision of the District Court in 76 Fed. Supp. 623 and in which case this Court denied certiorari.

A court of equity may decide both facts and law or it may, if it sees fit, refer doubtful questions of fact to a jury.

Garsed v. Beall, 92 U. S. 684;
Fitton v. Phoenix Assurance Company, 23 Red. 3.

It is within the discretion of the Court to do or to refuse.

Flagg v. Mann, 2 Summ. 406, Fed. Cas. No. 4847;
United States v. Samperyac, Hempst., 118 Fed. Cas. No. 16,216-a, affirmed 7 Pet. 222;
Wilson v. Riddell, 123 U. S. 608;
Keyes v. Pueblo Smelting and Refining Co., 31 Fed. 560;
Federal Reserve Bank of San Francisco v. Idaho Grimm Alfalfa Seed Growers Association, 8 F. 2d 92, certiorari denied 270 U. S. 646.

Neither party to a suit in equity brought in a Federal Court has an absolute right to have the question of fact arising in the courts passed on by a jury.

Herdsman v. Lewis, 9 Fed. 853;
Matter of Eric A. Christianson (Opinion of Justice Shiras when a District Judge), 101 Fed. 243;
Matter of Marshall, 287 Fed. 187.

See also:

Hummel v. Wells Pet. Co., 111 F. 2d 883;
Johnson v. American-Hawaiian S. S. Co., 98 F. 2d 847 at 852, cited in the Opinion of the court below;
City of Morgantown v. Royal Insurance Co., 169 Fed. 713, affirmed 337 U. S. 254.

Conclusion.

We respectfully submit that there is not the slightest ground for serious consideration of this vexatious petition. This bankrupt has flouted and defied her creditors since December 2, 1944, when she transferred this property to her daughter, Gladys Venes, and her daughter's minor children for the purpose of defeating a judgment which was later obtained against her by Harry V. Mooney in a sum in excess of $10,000.00. Her petition in bankruptcy was then filed and she was adjudicated on April 24, 1947. Upon discovery of her fraud, suit was instituted by the trustee to unravel the mischief which she had done. The case was called for trial before Judge William C. Mathes on November 23, 1948. The bankrupt did not demand a jury trial under Rule 38 of the District Court for the Southern District of California, nor under Rule 5, F. R. C. P., until the morning of the trial. She was brought over from jail where she was serving a term for passing a lot of worthless checks (see *People v. Boyce,* 87 Cal. App. 2d 828), and sought to bemuddle the situation still more by discharging her attorney, Rupert B. Turnbull, a nationally recognized practitioner in bankruptcy law, and a member of the Bar of this Court, and trying the case on behalf of herself and her privies. She has appealed to the United States Court of Appeals for the Ninth Circuit *in forma pauperis,* and we assume by reason of the fact that the petition and brief here are in typed form, she is likewise posing as a pauper before this Court. She has succeeded in staying the hands of her creditors for in

excess of four years from the date of her first fraudulent conveyance. We believe that the time has come when patience has ceased to be a virtue; that this Court should promptly deny the petition for writ of certiorari and permit the trustee to sell and dispose of the property in question for the benefit of this woman's defrauded creditors.

We respectfully submit that petition for writ of ceriorari should be denied.

Dated: March 7, 1950.

THOMAS S. TOBIN,

Attorney for Respondent George Gardner, Trustee in Bankruptcy, Estate of Ruth Vena Johnson, Also Known as Ruth Boyce, Bankrupt.